



November 26, 2002

Mr. Joe A. De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78216-0606

OR2002-6774

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172917.

The Llano Independent School District (the "district"), which you represent, received a request for copies of the official calendars for Superintendent Jack Patton for the 2000-01, 2001-02, and 2002-03 school years. You claim that the district does not maintain an "official" calendar for the Superintendent and that the Superintendent's personal calendars are not public information under the Public Information Act (the "Act"). We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also considered the comments submitted to this office by the requestor. See Gov't Code § 552.304 (providing for submission of public comments).

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 defines "public information" as

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.002. Specifically, you assert that, based on the factors articulated in Open Records Decision No. 635 (1995), the superintendent's personal calendars are not public records. In Open Records Decision No. 635, we observed that certain factors are relevant, although not exhaustive, in deciding whether a document is essentially a governmental or personal document: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the governmental body required its preparation; and whether its existence was necessary to or in furtherance of official business. Open Records Decision Nos. 635 (1995), 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are public information), 450 (1986) (notes of appraisers taken in the course of teacher appraisals were public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam are subject to the Act).

In this instance, you state that "Superintendent Patton purchased the calendar with his own money, maintains and uses the calendar himself and that the calendar is not available to district personnel." You also state that "he has sole access to the calendar" and that "the calendars requested are not used in connection with the transaction of official district business, nor do the calendars 'contain any information of substance, e.g., what occurred at a District-related appointment or event.'" Finally, you state that "appointments relating to official business of the District are scheduled on Superintendent Patton's personal calendar so that personal activities . . . may be scheduled to avoid conflict with District-related events and responsibilities." Based on your representations and our review of the submitted information, we conclude that Superintendent Patton's personal calendars are not records of the district. Thus, the submitted calendars are not subject to the Act and need not be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 172917

Enc: Submitted documents

c: Mr. William F. Jennings
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(w/o enclosures)